

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 307 OF 2023

Ravi Pickles and Spices India Pvt. Ltd.,
A Company registered under the Companies Act, 1956
Through its Authorised Signatory Ravindra Chandrakant Jain
Age 54 years, Occu : Business,
R/o. At Plot No. 37, Service Industries, CIDCO,
Aurangabad – 431 003

.. PETITIONER

VERSUS

1] The State of Maharashtra
Through Director, Food Civil Supplies
and Consumer Protection Department,
Government of Maharashtra,
2nd Floor, Annex Building
Mantralaya, Mumbai – 400 032

2] M/s. Shri Krishna Associates
A partnership registered
under the Indian Partnership Act, 1932
Through its Partner Mr. Aditya Agarwal,
Having its address at Shop No. 41,
Indira Gandhi Stadium Ansari Ward,
Gondia, Maharashtra – 441 601

.. RESPONDENTS

...
Advocate for petitioner : Mr. S.P. Brahme h/f. Mr. P.S. Mantri
AGP for the respondent – State : Mr. S.B. Yawalkar
...

**CORAM : MANGESH S. PATIL &
S. G. CHAPALGAONKAR, JJ.**

DATE : 9 JANUARY 2023

ORDER (MANGESH S. PATIL, J.) :

We have heard the learned advocate for the petitioner
Mr. Brahme and Mr. Yawalkar, the learned AGP.

2. The petitioner is seeking a *mandamus* directing the respondent no. 1 to undertake a fresh tender process for supply of 50 Kg Packaging Once used Serviceable empty B-Twill Jute Gunny Bags by cancelling the process wherein the respondent no. 2 has been turned out to be the lowest bidder on the ground that the offer of the respondent no. 2 was contrary to the government resolution dated 01-12-2016 inasmuch as the estimated cost provided for in the guideline no. 3.1.2.1 the offer of the respondent no. 2 was beyond the permissible limit of less than -20% of the estimated cost.

3. Mr. Brahme would submit that the tender document is for supply of 1,53,00,000 bags of 50 kgs each. The EME provided in the tender document is 1.01% and the EMD is stated to be Rs.69,68,17,030/- and the estimated price of 1 bag would come to Rs.44.89. He points out that the offer of the respondent no. 2 to supply the bags at the rate of Rs.32.76 per bag is beyond the permissible -20% and should have been rejected. He would submit that even there is a variance in the estimated cost inasmuch as the total cost for supply of 1,53,00,000 bags is stated to be Rs.70 Crore at some place and Rs.69,68,17,030/- at others. Mr. Brahme would point out that the Government guideline specifically requires to go for a fresh tender process if there is an offer which is less than -20% of the estimated

cost. He would submit that ignoring such guideline, the respondent no.2's financial bid has been accepted.

4. Mr. Brahme would further submit that when the guidelines require a specific procedure to be followed, any action of the respondent should be tested on that touchstone. He would rely upon the decision in the matter of ***Ramchandra Keshav Adke Vs. Govind Joti Chavare; 1975 DGLS (SC) 93.***

5. Apparently, there is no dispute about the fact that the government guideline in respect of the purchase policy of various departments in clause no. 3.1.2.1 requires permissible variation in the offer between -20% to +10% of the estimated cost. It also requires a fresh tender if there is an offer beyond such limits.

6. The estimated cost inasmuch as going by the tender document, 1,53,00,000 bags are to be supplied with EMD % of 1.01 and the EMD amount is stated to be Rs. 69,68,17,030/- and the estimated price for each bag would come to Rs.44.89. If this is taken as the base, any offer to supply a gunny bag at less than Rs.35.91 would be -20% of the estimated cost. If this is so, the offer of the respondent no. 2 to supply gunny bags at the rate of Rs.32.76 per bag is certainly beyond -20%. In paragraph 8 of the petition, the petitioner has given following chart of offers of various bidders :-

Sr. No.	Name	Total Rate	Actual Price
1.	Shri Krishna Associates (Respondent No.2)	501228000	32.76
2.	Balaji and Company	535500000	35
3.	MKS Constro-Venture Pvt. Ltd.	549729000	35.93
4.	Ravi Pickles & Spices India Pvt. Ltd. (Petitioner)	550035000	35.95
5.	NSM Ventures Pvt. Ltd.	595323000	38.91
6.	Alkey Synthetics Pvt. Ltd.	604350000	39.5
7.	Revati Enterprises	746334000	48.78
8.	Shiva Enterprises	749547000	48.99

Even going by the petitioner's calculations, if the offer of the respondent no. 2 and that of L-2 is beyond the permissible limit of -20%, there is one more offer of L-3 who is ready to supply at the rate of Rs.35.93 per bag whereas the petitioner is coming with an offer of Rs.35.95. When according to the petitioner, the permissible limit would be Rs.35.91, even if L-1 and L-2 are ignored, the offer of the L-3 would fall within the permissible limits. The petitioner is L-4. If such is the fact situation, when apart from the respondent no. 2 and L-2, the offer of L-3 is within the permissible limits, we are afraid, the petitioner cannot invoke the extra-ordinary powers of this Court under Article 226 of the Constitution seeking a mandamus for directing the respondent no. 3 to go for the tender particularly when L-2 and L-3 are not before us.

7. Indeed, it is trite as laid down in the matter of **Ramchandra Keshav Aadke** (supra) where a power to do a thing is given to do it in a certain way the thing must be done in that way or not

at all and other methods of performance are necessarily forbidden. Conspicuously, it was the power of a quasi judicial office that was under consideration before the Supreme Court. It was a matter of termination of tenancy under the Bombay Tenancy and Agricultural Lands Act, 1948 and the dispute was in respect of the fact as to whether there was termination of tenancy as contemplated under section 5(3)(b) of that Act in the manner which was subject to verification by following rule 2A of the rules framed thereunder where the Mamlatdar was expected to endorse his findings about surrender by holding an enquiry and recording an observation that the tenant understood the nature and consequences of the surrender and that it was voluntary and endorsement to be put about it on the document of surrender. It is in this context that the Supreme Court had stated that when the provision required the Mamlatdar to verify all the necessary ingredients and follow the procedure prescribed to reach a conclusion regarding surrender of tenancy being voluntary, he was mandated by the statute.

8. The matter in hand is regarding purchase of gunny bags by the government department - respondent no. 1. There are guidelines and these guidelines cannot be equated with the power of the respondent no.1. Atleast a stranger like the petitioner cannot insist that these guidelines should be followed strictly without admitting of

any deviation, more so, when he is L-4 and even the offer of L-3 quite fits in the permissible limits as is pointed out herein-above.

9. We see no merit in the petition. It is dismissed in *limine*.

[S. G. CHAPALGAONKAR]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/